

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF PUERTO RICO

IN RE:

ESJ TOWERS, INC.

DEBTOR

CASE NO.: 22-01676 (ESL)

CHAPTER 11

**RULE 9019 ORDER APPROVING AGREEMENT TO AUTHORIZE ATTENURE  
TO NEGOTIATE AND LITIGATE THE INSURANCE CLAIM AGAINST CHUBB  
INSURANCE COMPANY OF PUERTO RICO**

Upon the *Joint Motion For Approval Of Agreement By And Between ESJ Towers, Inc., ESJ Towers Homeowners' Association And Attenure Holdings Trust 1*, dated June 24, 2024 (the "Rule 9019 Motion"), filed by Debtor, Attenure Holdings Trust I and HRH Property Holdings, LLC (jointly "Attenure"), and the ESJ Towers Homeowners Association (the "HOA") (jointly the "Parties"), requesting the entry of an order approving the Agreement submitted as **Exhibit A** to the Rule 9019 Motion, in which the Parties agree to consensually resolve any and all matters regarding the authorization of Attenure to negotiate and litigate on behalf of the Debtor and the HOA against Chubb Insurance Company of Puerto Rico, the case titled Consejo de Titulares de ESJ Towers Condominium et al. v Chubb Insurance Company of Puerto Rico, CA2019CV03427 (the "State Court Action") regarding the Insurance Proceeds under Policy Number 08-95PR-00100607-0 and for related relief, as more fully described in the Rule 9109 Motion; the Court having found it has subject matter jurisdiction over this matter and that the relief requested in the Rule 9019 Motion is in the best interests of Debtor, its creditors and other parties in interest, in accordance with 28 U.S.C. §§ 157 and 1334 and in accordance with the Debtor's *Second Amended Chapter 11 Plan as Supplemented* confirmed through this Court's order dated May 21, 2024 (ECF No. 1838); considering that the Rule 9019 Motion and the relief requested therein constitute a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K)(M)&(O), venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; the Court having found that adequate, due and proper notice of the Rule 9019 Motion was given to all known

parties that may have an interest in the Insurance Proceeds, in the Insurance Claim or in the State Court Action; the Court further having found that no other or further notice is required; that at an extraordinary meeting of the HOA held on May 31, 2024, the Agreement was approved in compliance with Article 63 of the Puerto Rico Condominium Act, 31 Puerto Rico Laws Ann. § 1923h; and having reviewed the Rule 9019 Motion and all responses thereto; the Court has determined that the legal and factual bases set forth therein establish just cause for the relief granted herein; any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

The recitals, determinations, conclusions, and findings set forth above are hereby incorporated into this Order.

The Rule 9019 Motion is GRANTED and the Agreement submitted in **Exhibit A** to the Rule 9019 Motion is APPROVED in its entirety.

There is no dispute that Attenure is authorized to negotiate and litigate on behalf of Debtor and the HOA the State Court Action regarding the damages sustained by the ESJ Towers Condominium by Hurricanes Irma and María.

Any settlement offer made by Chubb shall be subject, pursuant to Article 63 of the Puerto Rico Condominium Act, 31 Puerto Rico Laws Ann. § 1923h, to its approval by the members of the HOA, and Attenure shall submit any settlement offer from Chubb thereto to the HOA for HOA approval within 5 days from the date in which Chubb has made any such offer.

Whether the Insurance Claim is settled as indicated above or determined by a judgment of the State Court in the State Court Action or otherwise by a Court with jurisdiction, the Parties agree and stipulate that the Insurance Proceeds actually received from the Insurance Claim (such amount, the “Insurance Payment”) shall be distributed as follows: (i) first, Attenure shall receive

\$1,000,000.00 to reimburse the sums previously advanced to Debtor pursuant to the Assignment Documents (the “Mitigation Payment”); in addition, Attenure shall receive a payment in the amount of 29% of the difference between (the “Attenure Percentage”) (a) the total Insurance Payment and (b) the \$1,000,000.00 reimbursement of the Mitigation Payment, as total compensation and in full satisfaction for its services and reimbursement of litigation costs and Mitigation Payments (collectively, the Attenure Percentage with the Mitigation Payment, the “First Deduction”); (ii) after satisfaction in full of the First Deduction, the remaining amount of the proceeds resulting therefrom will be directed for the needed repairs to the Condominium (the “Remaining Proceeds”). As provided in the Plan, the Remaining Proceeds will be deposited in an escrow account with Banco Popular de Puerto Rico on behalf of the Council (the “Escrow Account”) and will be exclusively used by the Council for the repairs of the Condominium. The Escrow Account will be managed and controlled by the Board of Directors of the Council (the “Board”) and Albert Tamarez, CPA and shall only be used in accordance with Article 63 of Act 129 of 2020 (the Puerto Rico Condominium Act of 2020), 31 L.P.R.A. §1923h. All checks to be issued from the Escrow Account will require the signature of a member of the Board and that of Mr. Tamarez. Debtor and any purchaser of Debtor’s assets will not be a beneficiary of the amounts to be deposited in the Escrow Account from the Insurance Payment or the Remaining Proceeds as defined herein, which will be exclusively utilized for repairs to the Condominium for the benefit of all holders of a proprietary interest therein.

For the avoidance of doubt, the First Deduction shall be paid directly to Attenure and all other Parties waive any claim, argument, or defenses regarding the First Deduction. As provided

for in the Plan, the Remaining Proceeds shall be deposited in the Escrow Account to be utilized as indicated above and all other Parties, and after satisfaction in full of the First Deduction, subject to and conditioned upon the occurrence of the effective date of the Plan and the Plan Supplements and upon entry of the Rule 9019 Order by the Bankruptcy Court.

Upon the entry of this Order, the Agreement is binding on the Parties, and shall inure to the benefit of and bind their respective successors and assigns. Further, upon entry of this Order, this Agreement shall be binding upon each of the Rule 9019 Notice Parties (as defined in the Agreement), excluding solely the United States Trustee. Accordingly, the entry of this shall constitute a factual and legal determination, binding –with a *res judicata* effect – on each of the Parties and Rule 9019 Notice Parties, excluding solely the United States Trustees, finding and decreeing that: (i) Attenure is authorized to negotiate and litigate the State Court Action, Insurance Claim, and/or Insurance Proceeds on behalf of Debtor, the HOA and its own behalf, subject to the terms of the Agreement; (ii) the Assignment Documents (as defined in the Agreement and the 9019 Motion) and are valid and binding, as amended through the Agreement; (iii) the distributions of the Insurance Proceeds (as defined in the Agreement and the 9019 Motion) shall be made as set forth in the Agreement and (iv) upon the Court’s approval of this Agreement through this Order, the Parties and the Rule 9019 Notice Parties shall be forever barred, precluded and estopped from asserting any allegation or argument in any way challenging the validity of the Assignment Documents, as amended herein, or any of the factual or legal determinations included in this Agreement or this Order, whether in this Court, the State Court (as defined in the Agreement) or any other forum. Further, the entry of this 9019 Order shall constitute a factual and legal

determination, binding on all Rule 9019 Notice Parties, that: (a) the Rule 9019 Notice constitutes adequate and appropriate notice to the Rule 9019 Notice Parties under the circumstances; (b) no other or further notice of the Agreement or Rule 9019 Motion is required; (c) the Rule 9019 Notice Parties served with the Rule 9019 Notice have been provided adequate and appropriate notice of the Agreement and Rule 9019 Motion and afforded an opportunity to be heard with respect to the Rule 9019 Motion, any potential objection to the Agreement, and all other relief otherwise requested therein; and (d) that the persons executing this Agreement are duly authorized to execute this Agreement on behalf of the Party.

This Order resolves Docket Entries Nos. 138, 150, 307, 363, 424, 563, 1053, 1054, 1300, 1301, 1369 and 1370 in Case No. 22-01676, with respect to Attenure's authorization to negotiate and litigate the State Court Action on behalf of Debtor and the Council.

This Order shall take effect immediately and shall not be stayed.

Nothing in this Order or the Parties' consent to the relief requested in the Rule 9019 Motion shall be deemed to be or construed as an admission by any Party of any liability, wrongdoing, act, or matter or that any claim or defense has or lacks merit.

This Court shall retain jurisdiction to hear and determine any and all matters or disputes (a) arising from or related to the implementation, enforcement, or interpretation of the Agreement, the Rule 9019 Motion and this Order; and (b) any challenge to any of the legal or factual determinations included in the Agreement and/or this Order.

IT IS SO ORDERED.

San Juan, Puerto Rico, this \_\_\_\_\_, \_\_\_\_\_, 2024.

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Enrique S. Lamoutte  
United States Bankruptcy Judge